

(2021) 06 BOM CK 0042

In the Bombay High Court

Case No : First Appeal No. 1602 Of 2019

Sushil Kumar And Others

APPELLANT

Vs

Umesh Kumar And Others

RESPONDENT

Date of Decision : 11-06-2021

Acts Referred:

Indian Succession Act, 1925 — Section 218, 291, 295, 370, 372
Indian Contract Act, 1872 — Section 148

Citation : (2021) 06 BOM CK 0042

Hon'ble Judges : S.M. Modak, J

Bench : Single Bench

Advocate : A.C. Dharmadhikari, Piyush Shukla, Ruksar Parveen Sheik, Anil Kumar, Anita Mategaonkar, B.N. Mohata

Final Decision : Allowed

Judgement

S.M. Modak, J

1]. Heard finally by consent of learned advocate appearing for the parties.

2]. Admit.

3]. The Court of 4th Joint Civil Judge, Senior Division, Nagpur, as per the judgment dated 25/07/2019 was pleased to dismiss the application of present appellants. It was for grant of Succession Certificate / Letter of Administration / Heirship Certificate. On reading the order, what this Court find is

that the trial Court was too much technical in deciding the matter. In respect of certain points, the trial Court has taken rigid view whereas in respect

of certain points the trial Court interpreted the law incorrectly.

4] I have heard learned advocate Shri A.C. Dharmadhikari for the Appellants, Shri Piyush Shukla, learned Advocate for the Respondent No.2, Ms

Ruksar Parveen Sheikh, Advocate h/f Shri Anil Kumar, learned Advocate for Respondent No.4, Mrs Anita Mategaonkar, learned Advocate for

Respondent No.5 and Shri B.N. Mohata, Advocate for Respondent No.6. The Respondent No.3 though served has chosen to remain absent. The

appellants have filed the pleadings, documents and evidence as per the Pursis dated 21.09.2020. The appeal was heard on that basis, by consent of

both sides.

5] There is certain amount lying in the savings bank account with the State Bank of India. Though account stands in the name of Sushilkumar Motilal

Sharma, he claimed that money belongs to the deceased Motilal Sharma. Apart from that, deceased Motilal was also having a locker in the State Bank

of India, Kingsway Branch - Respondent No.4, locker with Central Bank of India - Respondent No.5 and Punjab National Bank- Respondent No.6.

Though the appellants while filing the application before the trial Court were not aware about the articles kept in the locker, when the Court

Commissioner/Advocate Rakesh Ramraj Dwivedi was appointed, it was transpired that three lockers contain cash amount and golden ornaments.

6] The trial Court rejected the application on several grounds. It includes :-

a] Saving Bank account with State Bank of India does not stand in the name of deceased Motilal.

b] In his affidavit, the deponent Sushilkumar has not mentioned about the details of locker with Central Bank of India and Punjab National Bank.

c] The articles found in the lockers does not fall within the definition of 'debt' or 'security' as per the provisions of the Indian Succession Act.

d] The appellants are disentitled to the currency notes of Rs.500/-and Rs.1000/-denomination in view of their demonetization issued by the Central

Government in the year 2016.

e] The appellant Sushilkumar has not produced any document to show how an amount of Rs. 19,76,034/- is deposited in his own account.

f] When the bank account of deceased Sushilkumar is frozen by State Bank of India, he ought to have filed a civil suit instead of prosecuting the present proceedings.

7] There is reply filed by present Respondent No.6- Punjab National Bank before the trial Court. It is filed before this Court alongwith the Pursis

dated 21.09.2020. It is but natural for them to give explanation in respect of

Respondent No.1 Umeshkumar expired during the pendency of this appeal and his son Respondent No.3 - Piyush is the only legal representative. He had chosen to remain absent. Whereas other set of respondent contain three banks i.e. Respondent Nos. 4 to 6. The determination of the appeal also involves certain issues about compliance of the procedure and it is on the background of non-contest by any of the respondent.

9] The undisputed facts as revealed from the record are as follows :-

A] Death of Motilal Mahavirprasad Sharma on 16.07.2012 and death without making a Will.

B] Smt Ramadevi w/o Shri Motilal predeceased Motilal on 05.11.1987.

C] Deceased Motilal was having three sons. Original claimant Shri Sushilkumar, respondent No.1 Umeshkumar and Respondent No.2 Sunilkumar. D]

Holding lockers by deceased Motilal in respondent Nos. 4,5 and 6 Bank.

10] Initially, Sushilkumar filed an application under Section 372 of the Indian Succession Act and prayer was only to issue succession certificate. His

two brother's respondent nos.1 and 2 have not contested the proceedings. The three banks have also not contested the proceedings (except Punjab

National Bank by filing a reply as mentioned above). Sushilkumar filed affidavit of examination-in-chief on 06.10.2012. From the copy supplied, it is

nowhere disclosed that he was cross-examined. In addition to the relief of succession certificate, by way of amendment, he also prayed for grant of

Letter of Administration /Heirship Certificate. He filed additional affidavit on 11.04.2018. He was not cross- examined.

11] The Court Commissioner Advocate Rakesh Dwivedi explained the procedure followed by him prior to visiting the three banks for taking inventory

of the contents of the lockers. He found following articles:-

Name of the Bank Locker Description of articles Number State Bank of India, 604 Yellow metal articles and Kingsway, Nagpur. Cash of Rs.

26,61,200/-

Punjab National Bank 652 Cash of Rs. 17,52,600/- Kingsway, Nagpur.

Central Bank of India, 1590 Cash of Rs. 3,51,450/- L.I.C. Square, Nagpur.

Except asking as to who has put those articles (during cross- examination by Punjab National Bank) nothing was asked to him. Still the valuation of

Yellow Metal has not come on record and that is why valuer Chandrakant B.

Vastani was appointed and Assistant Superintendent Prakash

Somkuwar attached to Civil Judge Senior Division, Nagpur is also appointed to carry out the work. He gave report dated 02.04.2019. The details of

gold articles valued by the Jeweller Vasatani is as follows :-

A]. Weight 3389 grams

B]. Value Rs. 1,08,44,800/-.

. ABOUT MONEY STANDING IN S.B ACCOUNT

12]. No doubt it is true that the S.B. account stands in the name of original claimant Sushil Sharma. In the main application, it is pleaded that an

amount of Rs. 19,76,034/- is credited to this account whereas the deposit slip produced by Sushilkumar shows an amount of Rs. 19,75,534/-. The Trial

Court has emphasised on variance in the said amount. I think the amount mentioned in the deposit slip at Exhibit-56 ought to have been given

weightage. Furthermore, the Trial Court has emphasised on the fact that the savings bank account stands in the name of appellant - Sushilkumar and

not in the name of deceased Motilal Sharma. There cannot be any dispute about the name standing in the record of State Bank of India. However,

when Sushilkumar says that money belongs to Motilal, it means he wants money should not go exclusively to him but his two brothers would also get

the amount. It means that he has made a statement detriment to his interest. I find no wrong in accepting his contention. Furthermore, Trial Court

observed about non-filing of the suit when this account is frozen by the bank. There is no need to file a suit. If Sushilkumar succeeds in getting

succession certificate, State Bank of India is bound to act as per the directions of the Court. Asking the party to file a suit is nothing but prolonging the

litigation which is not at all contested.

13] So for above reasons, the Trial Court ought to have issued succession certificate in favour of deceased Sushilkumar. He expired after giving

evidence. The certificate could have been issued in favour of his legal representatives which were brought on record. While rejecting the claim in

respect of the money in S.B. Account, Trial Court has taken rigid view. Money in savings bank account belongs to the account holder and bank holds

it till it is demanded by the account holder. It is nothing but a debt recoverable by the account holder. The appellants are entitled to get succession

certificate in respect of this amount.

GOLD ARTICLES AND CASH AMOUNT IN LOCKERS 14] It is true that above two articles cannot be described as debt or security as

contemplated in Section 370 of the Indian Succession Act. These two articles were kept in the lockers. Even bank is not aware about the contents of

the locker. It is within the domain of locker hirer. It will be material to consider the relationship of the Bank and Locker Hirer. Recently, there is

occasion for Hon'ble Supreme Court to consider the relationship in between the bank and locker hirer in case of Amitabh Dasgupta V/s United Bank

of India reported in 2021 SCC Online SC 124 in. The circular dated 04.12.2006 by Reserve Bank of India (in the form of proposal) was referred (para

no-7). It was not finalized. Hon'ble Supreme Court [after taking over view of the judgments given by certain High Courts and by the National

Commission] has not opined about exact relationship in between the banker and locker hirer. Hon'ble Supreme Court confirmed the decision of

National Commission. Limited compensation was granted to the locker hirer in view of admission by the Banker to open the locker. However, the

issue about "liability in case of loss of contents of the locker" was kept open to be decided by the Civil Court. 15] So the relationship cannot be

considered as that of bailor and bailee as contemplated under Section 148 of the Indian Contract Act. Bank cannot use the contents of locker (just like

using the money deposited). Certainly, it cannot be said that bank owes to the locker hirer the contents of the locker. The articles are kept in the

locker only for safe custody and they cannot be said to be in the exclusive possession of the banker. So, question arises to whom bank should return

the articles after the death of hirer and on the basis of which documents? On this background, it will be material to consider the provisions of the

Indian Succession Act. Learned Advocate Shri A.C. Dharmadhikari relied upon the provisions of Section 218 of the Indian Succession Act. 16]

Administration of the estate belonging to a person who dies intestate can be granted to any person. In this case, the deceased Motilal was a Hindu. As

the Section itself says, letter of administration can be granted if a person dies without making a Will. High Court of Delhi in the case of Arti Kapahi

V/s State reported in 2006 SCC Online Del 408 was pleased to observe "letter of administration can be granted even when the Will is not annexed

(para-18)"". 17] There was occasion for High Court of Madras to consider the nature of inquiry required to be conducted by the Court granting letter

of administration. It is in the case of Dr. R.V. Venkatesan V/s D. Jenbagalakshmi and others reported in AIR 2012 MAD 94 . It was held as under :-

question of title need not be enquired into, Court has only to consider whether there is a estate at all to be administered. It is not necessary to decide

which assets are likely to come to the share of the petitioner"".

18] In this case, the Trial Court has only considered the claim as to entitlement to succession certificate. There is no finding about entitlement to letter

of administration. This is dereliction of duty. For above discussion, it can certainly be said that deceased Motilal was having a estate in the form of

three lockers and its contents. Generally, a person opens a locker and keep valuables in it for safe custody. So this Court feels that a letter of

administration can certainly be granted in favour of the appellants. Because the authority needs to be given to someone who can administer the estate.

The estate cannot remain unadministered.

19] Claimant Sushilkumar has referred about claim by Respondent No.3 Piyush. Piyush claims that he was nominated by deceased Motilal in respect

of locker with State Bank of India. On what basis Sushilkumar has made this claim is not clear. Even Piyush has not come forward. Trial Court has

referred to this in Para No.31 of the impugned order. There is no finding on this claim. Even otherwise law on the point of nomination is clear.

Nominee holds the property on behalf of heirs. So there is no substance in the said claim.

20] Merely because the Government has issued a demonetization policy, it does not mean that the claim as to the requisite currency notes is

extinguished. If we go by the report of Assistant Superintendent, we may find that apart from banned currency notes of Rs.500/- and Rs. 1000/-notes

of Rs. 50/- and Rs. 100/- denomination were also found in the locker. Trial Court has wrongly rejected the claim in toto. Even in respect of banned

currency notes, the appellants can approach the concerned authorities and may do the needful. It is very well true that as the claim is pending for

adjudication before the trial Court, it was not possible for the appellants to approach the competent authority under the Specified Bank Notes

(Cessation of Liabilities) Act, 2017. This Court hope that when approached, the

competent authority will consider the claim of the appellants in respect of banned currency notes.

21] The Trial Court has emphasised on 'not mentioning the locker in Central Bank of India and Punjab National Bank' in the affidavit of appellant

Sushilkumar. However, trial Court has overlooked the report of Court Commissioner Advocate Dwivedi. In detail, he had given description of the

contents of locker with Respondent Nos. 5 and 6. So the details were on record. No doubt it is true that in the affidavit, the appellant Sushilkumar has

not described the two lockers. These details do find place in the main application. Trial Court has overlooked the fact that the matter is non-

contentious. Trial Court ought not to have taken a rigid view.

22] Once this Court feels that letter of administration can be issued, there is no need to consider the request of grant of heirship certificate.

Accordingly, the point Nos.1 and 2 are answered in the affirmative.

THE POINT NO.3 23] There is an argument that original appellant Sushilkumar, respondent No. 2 Sunilkumar and deceased Respondent No.1

Umeshkumar are entitled to succeed 1/3rd each to the estate of deceased Motilal, but this Court feel that ""so far as distribution of shares is

concerned"" is outside the purview of inquiry of the Court considering such claim. The reason is limited inquiry is contemplated. So Court can only

grant a letter of administration with direction to administer the estate and distribute it amongst the legal representatives as per their shares as per

personal law. As contemplated under Section 291 of the Indian Succession Act, the appellants will have to furnish an administration bond to the extent

of Rs. 1,50,00,000/- (roughly the sum total of golden ornaments and cash) in order to ensure that they will administer the estate as per the law. So also

the appellants need to execute bond of Rs. 17,00,000/- for due performance of the obligation for distribution of the amount lying in the savings bank

account.

24] The claim of the banks to the rent of the lockers is genuine. The appellants have to pay the rent to concerned bank. Hence, I proceed to pass

following order:-

ORDE R 1] The appeal is allowed.

2] The judgment dated 25.07.2019 passed by 4th Joint Civil judge, Senior

Division, Nagpur in Succession Case No. 83/2014 is set aside.

3] The Court of Civil Judge, Senior Division, Nagpur is directed to issue Succession Certificate in favour of the appellants in respect of Savings Bank

Account No.33914081105 State Bank of India, Kingsway Branch, Nagpur.

4] The Court of Civil Judge, Senior Division, Nagpur is directed to issue letter of administration in favour of the appellants to administer the estate of

deceased Motilal Mahavir Prasad Sharma in the form of :-

(a). The. golden. ornaments. Valuing Rs. 1,08,44,800/-

(b). Cash (the total amount as stated by the Commissioner Shri Dwivedi) both lying in the three lockers opened with respondent Nos.4,5 and 6 Bank.

5] The appellants are directed to execute an administration bond to the extent of Rs. 1,00,50,000/- (Rupees One Crore Fifty Lakhs only) and bond to

the extent of Rs. 17,00,000/- (Rupees Seventeen Lakhs only) within a period of 30 days before the trial court and then only further compliance be

made.

6] The appellants are directed to distribute the amount in the savings bank account and the cash amount and golden ornaments amongst them and

respondent No.2 Sunilkumar Motilal Sharma and Respondent No.3 Piyush Umeshkumar Sharma as per their shares as per the Personal Law.

7] The appellants to pay necessary rent / charges to respondent Nos. 4, 5 and 6 for the lockers.

8] The respondent Nos. 4, 5 and 6 are directed to hand over the golden ornaments and the cash amount lying in the respective lockers to the

appellants.

09] The appellants are at liberty to approach the competent authority under the provisions of the Specified Bank Notes (Cessations of Liabilities) Act,

2017 or any other relevant law for exchange of banned currency notes found in the three lockers.

10] The appellants to pay necessary Court fee.

11] The appellants, respondent No.2 and 3 to bear their costs throughout and to pay the costs to respondent Nos. 4, 5 and 6.